

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

LING et al.

Application No: 10/824,481

Filed: April 15, 2004

For: *Use of B7-H3 as an  
Immunoregulatory Agent*

Art Unit: 1644

Examiner: Ilia I. Ouspenski

Attorney Docket No.: **WYS-005.01**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

### **RESPONSE TO RESTRICTION REQUIREMENT**

Sir:

This paper is being filed in response to the Restriction Requirement, mailed on November 7, 2006, in the above-referenced application. A request for a four-month extension of time is submitted herewith. Applicants submit the following remarks in this Response.

Claims 1-21 are currently pending in the application. The Examiner has required restriction to one of six groups under 35 U.S.C. §121. In response to the restriction requirement, Applicants provisionally elect **with traverse, Group I**, claims 1-11 and 17-21, drawn to a method of inhibiting activation of a lymphocyte, comprising contacting the lymphocyte with a B7-H3 agonist, wherein the agonist is a soluble form of B7-H3, classified in Class 514, subclass 12. Traversal is to the extent that no undue burden would be required to search all Groups of claims. See MPEP § 803 ("If the search and examination of an entire application can be made without serious burden, the [E]xaminer must examine it on the merits, even though it includes claims to independent or distinct inventions.").

In addition to restriction among various groups of claims, the Examiner has required a species election to a soluble form of B7-H3 comprising one of SEQ ID NOs:16-22 under 35 U.S.C. § 121. Applicants provisionally elect, **with traverse, SEQ ID NO:22**, for search purposes only. The Examiner has required a further species election to a soluble form of B7-H3

comprising one of SEQ ID NOs:10, 12, or 14 under 35 U.S.C. § 121. Applicants provisionally elect, **with traverse, SEQ ID NO:14**, for search purposes only.

Applicants reserve the right to petition the Commissioner to review the restriction requirement if this restriction requirement is made final.

### **CONCLUSION**

If a telephone conversation with Applicants' Agent would expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617)832-1000.

The Director is hereby authorized to charge any deficiency that should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Deposit Account No. 06-1448**, under Ref. No. **WYS-005.01**.

Respectfully submitted,

Foley Hoag LLP

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